

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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JUN 07 2002

Michael N. Milby, Clerk

ROYCE EUGENE MITCHELL, JR., and
DR. CLIFFORD F. WILLIAM, J.D.
Plaintiffs

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H-02 -2167

v.

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GWYN SHEA, SECRETARY OF STATE
FOR THE STATE OF TEXAS
THE STATE BAR OF TEXAS
THOMAS R. PHILLIPS
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE JEFFERSON
XAVIER RODRIGUEZ
JEFFREY A. LEHMANN
BROADUS A. SPIVEY

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Defendants

PLAINTIFF'S ORIGINAL COMPLAINT

1. Plaintiffs Royce Eugene Mitchell, Jr. and Clifford F. William, bring this complaint against the State Bar of Texas for violations of the Constitutions of the United States of America (1787) and the State of Texas.

A. PARTIES

2. Plaintiff, **Royce Eugene Mitchell, Jr.**, hereinafter referred to as **Mitchell**, is a De Jure Citizen of the State of Texas and by virtue of that citizenship, Mitchell is a Citizen of the united States of America.

3. Plaintiff, **Clifford F. William**, hereinafter referred to as **William**, is a De Jure Citizen of the State of Texas and by virtue of that citizenship, **William** is a Citizen of the United States of America.

4. Defendant, **Gwen Shea**, Secretary of State for the State of Texas, is a person who is a resident of the State of Texas and by virtue of that residence a citizen of the United States of America, and may be served at the Thomas J. Rusk Building, 208 E. 10th St., Austin, Texas 78701.

5. Defendant, **The State Bar of Texas**, is a public corporation and may be served by serving the President of the State Bar of Texas, Broadus A. Spivey, at the State Bar of Texas, PO Box 12487, Austin, TX 78711.

6. Defendant, **Thomas R. Phillips**, is a person who is a resident of the State of Texas and by virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

7. Defendant, **Nathan L. Hecht**, is a person who is a resident of the State of Texas and by virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

8. Defendant, **Craig T. Enoch**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

9. Defendant, **Priscilla R. Owen**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

10. Defendant, **James A. Baker**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

11. Defendant, **Deborah G. Hankinson**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

12. Defendant, **Harriet O'Neill**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

13. Defendant, **Wallace Jefferson**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

14. Defendant, **Xavier Rodriguez**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the Supreme Court Building, P. O. Box 12248, Austin, Texas 78711.

15. Defendant, **Jeffrey A. Lehmann**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the State Bar of Texas, PO Box 12487, Austin, TX 78711.

17. Defendant, **Broadus A. Spivey**, is a person who is a resident of the State of Texas and virtue of that residence a citizen of the United States of America, and may be served at the State Bar of Texas, PO Box 12487, Austin, TX 78711.

B. JURISDICTION

18. The court has jurisdiction over the law suit because the action arises under the Constitution for the united States of America (1787), Article 3, Section 2. Moreover, this court has jurisdiction over the claims for relief under **18 U.S.C. §§1964 (a)** (Equity) and **1964 (c)** (Right to Sue and Treble Damages); **28 U.S.C. §§ 133 (a)** (Federal question), **1349** (corporation organized under federal law as a party) and **1337** (Regulation of Commerce).

19. Further, jurisdiction of this action is also founded on the existence of a federal question arising under particular statutes.

20. This action arises under 42 U.S.C. § 1972, and under 28 U.S.C. § 1343. Plaintiffs seek a declaratory judgment, pursuant to 28 U.S.C. § 2201, a preliminary injunction, and other appropriate relief to enjoin the deprivation under color of law of the State of Texas of the rights, privileges, and immunities of the plaintiffs and the class they represent, arising under the Constitution of the United States, more particularly, the Fourteenth and Fifteenth Amendments thereto. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

C. CONDITIONS PRECEDENT

21. All conditions precedent have been performed or have occurred as required by **§101.102** of the Texas Civil Practice and Remedies Code, Commencement of Suit.

D. Federal Questions

22. Whether the Supreme Court of Texas has constitutional authority to file suit in one of its own inferior Texas State District Court.

23. Whether the Supreme Court of Texas has constitutional authority to prosecute an alleged violation of a statute promulgated by their own licensed agents, said agents being of both the Judicial and Legislative branches of government simultaneously.

24. Whether the Supreme Court of Texas has prosecutorial authority given to it by the Texas Constitution.

25. Whether a State District Court has jurisdiction over a case for which the Supreme Court is a Party.

E. HISTORY OF THE CASE

26. On January 2, 2002, plaintiffs filed the statutorily required forms to run for the Supreme Court of Texas on the Libertarian Party ticket.

27. On January 11, 2002, the Supreme Court of Texas, through its agent, Kathy Holder, contacted plaintiffs and informed plaintiffs that the plaintiffs will be blocked from the ballot due to the statutory requirement that all candidates for the Supreme Court of Texas must be members of the State Bar of Texas.

28. On January 25, 2002, Timothy J. Clyne, an alleged agent of the Unauthorized Practice of Law Committee of the Supreme Court for the State of Texas, contacted plaintiffs in an attempt to perfect service for civil litigation in the 270th District Civil Court in Houston Texas, said service being related to retaliatory action against plaintiffs for running for a constitutional, judicial position, to wit: Supreme Court Justice, without being a member of the State Bar of Texas. Clyne's stated purpose was prosecution of a suit related to the unauthorized practice of law but said prosecution comes fast on the heels of the threat by the agent, Kathy Holder, of the Supreme Court Justices to move to block plaintiffs from entering the Supreme Court race. Remember that Holder is a full time employee of the State of Texas when making political phone calls and other campaign work under the orders of Justice **Thomas R. Phillips** while on the Texas States payroll. This is a felony in and of itself.

F. FACTS OF THE CASE

29. One of the prerequisites for the acceptance of the State of Texas to be readmitted into the union after the War for Southern Independence, also known as the Civil War, was the enactment of its new constitution. That constitution affirmed as the Supreme Law of Texas the following:

“SECTION I. The Constitution of the United States, and the laws and treaties made, and to be made, in pursuance thereof, are acknowledged to be the supreme law; that this Constitution is framed in harmony with, and in subordination thereto; and that the fundamental principles embodied herein can only be changed, subject to the national authority.”

30. The Act to readmit the State of Texas to Representation in the Congress of the United States. *March 30, 1870*, stated the following requirements for admission of Texas, beyond the requirement not to change its constitution without national authority:

“And provided further, That the State of Texas is admitted to representation in Congress as one of the States of the Union upon the following fundamental conditions:

First. That the constitution of Texas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to

vote who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: Provided, That any alteration of said constitution, prospective in its effects, may be made in regard to the time and place of residence of voters.

Second. That it shall never be lawful for the said State to deprive any citizen of the United States on account of his race, color, or previous condition of servitude, of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than such as are required of all other citizens.

Third. That the constitution of Texas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the constitution of said State.”

31. To date, no permission has ever been granted in any Act of Congress for the State of Texas to amend its Constitution to allow any of the rights guaranteed to the citizens in the Constitution of 1869 to be limited or removed.

32. Texas was readmitted to the United States by virtue of the passage of its new Constitution and the Fourteenth and Fifteenth Amendments to the United States Constitution,

and the passage of the Act to admit Texas to Representation in the Congress of the United States, on March 30, 1870. At that time, there was no State Bar of Texas and the practice of law was open to anyone as a fundamental right under the Constitution by virtue of the fact that said right was not specifically outlawed in the 1869 Constitution. Moreover, nomination to all Constitutionally created offices, such as Supreme Court Justices, was open to all citizens. The same is true to this day on the Federal Judicial level, Federal Judges do not and are not required to hold membership in the Bar Association.

33. On April 19, 1939, the State Bar Act was signed into law by Governor W. Lee O'Daniel, thereby outlawing the practice of law by anyone except those admitted to the State Bar of Texas. This action violated the agreement under which the State of Texas was readmitted to the United States, paragraph 23, and it violated the Constitution of the State of Texas, Section 1, *supra*, approved by the people of Texas in November 1869 (Exhibit D). A review of those who voted on this legislation shows that members of the legislature who voted on the State Bar Act were attorneys, as shown in Exhibit A, and indicated by check marks by their names.

34. In 1980, the Texas Legislature passed an amendment that mandated all who are elected to the Supreme Court of Texas must be a member of the private club known as the State Bar of Texas. This enactment also violated the Act readmitting the State of Texas, paragraph 23, and the original Constitution of the State of Texas, *supra*. A review of those who voted on this legislation shows that members of the legislature, who voted on the amendment to the Constitution restricting citizens from voting for their choice of Justice, and restricting citizens

from running and being elected for the position of Justice of the Supreme Court, were attorneys, as shown in Exhibit B.

35. In the Constitution passed by constitutional convention on September 6, 1875, Exhibit C, the following provision was placed in Article 3, Sec. 22, which states:

“SEC. 22. A member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the house, of which he is a member, and shall not vote thereon.”

36. In the State Bar of Texas Update, dated October 1998, in the lead article entitled, “Responding to Unjustified Criticism of the Judiciary,” the State Bar Board of Directors admits to creating a program to respond to anyone who criticizes the judiciary. No mention of the right to freedom of speech is made in this article. Moreover, the phone number, 800-204-2222, Ext. 1414, is given for anyone who needs to get more information of the State Bar Program for Response to Criticism of Judges. The claim is that lawyers can respond to media attacks on judges but in reality, attacks on the State Bar of Texas such have been undertaken during the campaigns of plaintiffs are the real focus of this effort.

37. Under the guise of stopping the unauthorized practice of law, which practice every citizen may do as a right under the Constitutions of the United States and the State of Texas, defendants have undertaken to attack plaintiffs through the use of an injunction, in Case Number 2002-01066, sought in the 270th Judicial District Court of Harris County, Texas, whose judge,

Brent Gamble, is also a member of the State Bar of Texas, having Bar Card Membership Number 07603300, and who has been a member of the State Bar of Texas since November 4, 1983, and paid approximately \$5,035.00 dollars of his personal income to the Bar Association.

38. The Unauthorized Practice of Law Committee of the Supreme Court of Texas has attacked plaintiffs under the following statutes, passed in violation of Texas' Constitutions, and in violation of the Sherman Anti-Trust Act:

“§ 38.122. Falsely Holding Oneself Out as a Lawyer

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Added by Acts 1993, 73rd Leg., ch. 723, § 5, eff. Sept. 1, 1993.”

and

“SUBCHAPTER C. MEMBERSHIP

§ 81.051. Bar Membership Required

(a) The state bar is composed of those persons licensed to practice law in this state. Bar members are subject to this chapter and to the rules adopted by the supreme court.

(b) Each person licensed to practice law in this state shall, not later than the 10th day after the person’s admission to practice, enroll in the state bar by registering with the clerk of the supreme court.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.”

39. The forgoing statutes were passed by the Legislature, which has in place in the most powerful positions attorneys, who voted on this legislation despite the following provision of the Texas Constitution:

“Article 3 - LEGISLATIVE DEPARTMENT

Section 22 - DISCLOSURE OF PRIVATE INTEREST IN MEASURE OR

BILL; NOT TO VOTE

A member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and shall not vote thereon.“

40. In fact, all of the measures related to the State Bar of Texas were voted upon by lawyers, or attorneys, who did not follow or comply with the forgoing Art. 3, Sec. 22, requirement and because of such, all legislation related to the State Bar of Texas is null, having been created in violation of the Constitution of the State of Texas. All legislation related to the State Bar of Texas is null and void having been created in violation of plaintiffs' unalienable right to run for constitutional office which was not restricted in the Constitution under which the State of Texas was readmitted into the United States, the citizens' right to vote for the candidate of their choice which was not restricted in the Constitution under which the State of Texas was readmitted into the United States and in violation of the Act to readmit Texas to representation in Congress.

41. The State Bar of Texas is a violation of Texas anti-trust legislation, Title 2 of the Business and Commerce Code, which states as follows:

“§ 15.05. Unlawful Practices

(a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.”

42. The State of Texas attempted to exempt the State Bar of Texas from the provisions of the Business and Commerce Code, Title 2, §15.05, by enacting the following legislation, with said Act:

“§15.05 (g) Nothing in this section shall be construed to prohibit activities that are exempt from the operation of the federal antitrust laws, 15 U.S.C. Section 1 et seq., except that an exemption otherwise available under the McCarran-Ferguson Act (15 U.S.C. Sections 1011–1015) does not serve to exempt activities under this Act. Nothing in this section shall apply to actions required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.”

43. However, since the creation of the State Bar was a null and void Act at the time of its inception, the exemption granted under the Business and Commerce Code, Title 2, §15.05, does not apply since the State Bar of Texas is in fact a public corporation and not an agency of the State of Texas.

44. The United States Code, Title 15, Chapter 1, states as follows:

“Sec. 2. - Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.”

45. The State Bar of Texas is a person within the meaning of the term defined in the Act. Moreover, the State Bar of Texas is a corporation and not an pure agency of the State of Texas. The **Texas Government Code, § 81.011. General Powers**, states, “(a) The state bar is a public corporation and an administrative agency of the judicial department of government.” The State Bar of Texas has attempted to monopolize the practice of law across state lines through compacts with state bar organizations in other states, resulting in the removal of “licenses” to practice law of attorneys in other states based upon actions taken by the State Bar of Texas within the State of Texas. These actions are actions in Interstate Commerce and are hence governed by the U.S. Code, Title 15, Chapter 1, Sec. 2, aforementioned.

46. Title 18, Part 1, Chapter 96 of the United States Code defines and prohibits the activities of Racketeer Influenced Corrupt Organizations (RICO Act). Racketeering activity is defined in:

“Sec. 1961. - Definitions

As used in this chapter -

(I)

‘racketeering activity’ means

(A)

any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;”

47. Title 18, Part 1, Chapter 96 of the U.S. Code gives the United States District Court jurisdiction over criminal and civil cases related to violations of the RICO Act:

“Sec. 1964. - Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.”

48. Moreover, any person injured by the activities which violate Section 1962, may bring suit in Federal District Court as shown in Title 18, Part 1, Chapter 96 of the U.S. Code:

“(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.”

49. The actions of the corporation known as the State Bar of Texas, from the day of its creation in 1939, are an illegal restraint of trade and violate plaintiffs’ rights to work, coupled with extortion and attempted extortion, across state lines, affecting interstate commerce, involve the conspiratorial actions of multiple actors, including the non-judicial acts of defendants, and involve more than two acts of racketeering activity within the past 10 years. The State Bar of Texas is a professional corporation and a RICO enterprise under 18 U.S.C. §§ 1962(a), which states in pertinent part:

“It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”

50. Specifically, the defendants, under color of law, have conspired to, and have engaged in, threats and attempted extortion related to plaintiffs actions protected by the Constitutions of the United States of America (1787), the Bill of Rights (1791) and the Constitution of the State of Texas (1869), approved by the citizens of Texas and the Congress of the United States prior to Texas being readmitted to representation in Congress. The threats and attempted extortion were undertaken to force plaintiffs to abandon the aforementioned rights, specifically the right to act as counsel of choice for any citizen via Pro Hac Vice, stemming from the right to work, which itself stems from the right to happiness guaranteed by the several aforementioned Constitutions. These action are a violation of the Texas Penal Code, Title 11, Chapter 71 (Organized Crime) and Chapter 31 (Theft). Violations of Chapter 71 of the Texas Penal Code are at minimum a Class A misdemeanor, and carry a maximum sentence of up to one year in state prison. Violations of Chapter 31 of the Texas Penal Code are “a felony of the first degree if the value of the property stolen is \$200,000 or more”, which plaintiffs allege in this complaint, which carries a maximum sentence of five to ninety-nine years.

51. Threats to plaintiffs' rights under the Constitutions, and attempted extortions, are chargeable and punishable under State law, but the perpetrators have a stranglehold on the dispensation of justice in the State of Texas, preventing their being charged with any offense. Defendants have acted under color of law in all of the actions giving rise to this action.

52. Extortion is broadly defined in **18 U.S.C. §1951 (b) (2)** as:

“The term ‘extortion’ means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.”

53. Defendants have taken the property of plaintiffs, to wit: rights to life, liberty, property and the pursuit of happiness, under which lies plaintiffs' rights to work, secured by the Constitutions of the United States (1787) and the State of Texas (1869) and rights secured by the Bill of Rights (1791). Those rights have been taken by wrongful use of actual and threatened force and under color of law.

“Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is

denied the protection which the law affords those who are permitted to work.

Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.” Smith v. State of Texas, 1914.SCT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914).

and,

“Rights involving the conduct of business are property rights”, United States v. Arena, 180 F.3d 380 (2d Cir. 06/07/1999); Northeast Women’s Center Inc. v. McMonagle, 868 F.2d 1342 (3rd Cir. 03/02/1989) cert. denied, [493 U.S. 901] (1989); Town of West Hartford v. Operation Rescue, 915 F.2d at 101.

and,

“This Circuit has also repeatedly acknowledged the principle that a person has a liberty interest in pursuing an occupation.” Connelly v. Comptroller of Currency, 876 F.2d 1209 (5th Cir. 07/07/1989); Ferrell v. Dallas Independent School District, 392 F.2d 697, 707 (5th Cir. 1968); Shaw v. Hospital Authority, 507 F.2d 625, 628 (5th Cir. 1975); Daly v. Sprague, 675 F.2d 716, 727 (5th Cir. 1982).

54. Plaintiffs believe that defendants did have the power to harm plaintiffs both by deprivation of property and liberty through the use of their subservient state district courts, specifically in the instant case the 270th State District Court in Houston, Harris County Texas.

Plaintiffs believe that defendants would use that power since the latest action by defendants is in the aforementioned court at the time of this filing. The threat to plaintiffs' liberty and property being imminent, the fear of loss of both liberty and property is more than reasonable. Moreover, defendants have received property to which they had no legal claim, to wit: plaintiffs' rights to act as counsel for any defendant who so chooses to use said service.

“[A] direct threat of future harm is not necessary to establish the reasonableness of the alleged victim’s fear of future economic loss”; *United States v. Abelis*, 146 F.3d 73, 83 (2d Cir.), cert. denied, 119 S. Ct. 527 (1998); see also *United States v. Covino*, 837 F.2d 65, 68 (2d Cir. 1988) *United States v. Capo*, 817 F.2d 947, 951 (2d Cir. 1987) (*en banc*).

55. The State Bar of Texas is a public corporation, which is an entity with an economic purpose, receiving more than **5.3 million dollars per year**. That purpose is the monopolization of the practice of law in the State of Texas, in consort with other state bars to limit the practice of law in other states, in violation of the Sherman Anti-Trust Act and the Texas Anti-Trust provisions of the Business and Commerce Code, to which members of the State Bar of Texas, voting in the Legislative Branch while holding positions in the Judicial Branch, have exempted themselves. The defendants are powerful members of the State Bar of Texas and have engaged in the aforementioned actions against plaintiffs, actions made the basis of this suit.

56. During the relevant times, the defendants conspired together to defraud plaintiffs of their rights to life, liberty, property and the pursuit of happiness. As a part of the scheme to

defraud, attorneys who violated their oaths of office by operating in two branches of government simultaneously, caused to be passed the State Bar Act. In this act, it was made a statutory requirement that all those who practice law in the State of Texas to be a member of said State Bar.

57. However, the practice of law had always been a right of all Texans under the preceding Constitutions and the control of that practice in the courts left up to the judges in the individual courts. The new State Bar Act (1939) served to strip Texans of the right to be counsel of choice for any other citizen and the right to that citizen's right to counsel of choice. Further, the new State Bar Act was not authorized as a change in the Texas Constitution as was mandated by Art. 1 of the Reconstruction Constitution, *supra*, which required all changes to be approved by Congress.

58. Using this base of illegality and U.S. Constitutional mandates, the defendants have attacked plaintiffs who are attempting to do that which was not restricted under the Constitution and which plaintiffs have a right to do as a part of those unalienable rights secured by the several constitutions. Defendants have conspired to deprive plaintiffs of those rights. They have threatened, on several occasions, plaintiffs for exercising the God-given, unalienable rights to property and the pursuit of happiness.

59. On July 13, 1998, defendant Lehmann, at the request of the several justices of the Supreme Court of Texas, and in violation of their oaths of office, and in concert with defendant Hagan and each other, delivered to plaintiff William a letter threatening William for "activities

which constitute the unauthorized practice of law.” Specifically William was accused of settling personal injury cases and negotiating settlements of such cases for citizens of the State of Texas. This action was a threat aimed at causing plaintiff William to cease from a right secured to him under the several constitutions aforementioned. This letter caused plaintiff William to appear to answer charges before the Unauthorized Practice of Law Committee of the Supreme Court of Texas.

60. On January 24, 2002, all defendants except Lehmann, did, through their agent, Timothy J. Clyne, file suit attempting to secure a temporary restraining order, temporary injunction and permanent injunction against plaintiff William in Texas State District Court #270, for the purpose of stopping plaintiff William from exercising the God-given unalienable right to work, to property and to the pursuit of happiness. Said action was further designed to enrich the treasury of the State Bar of Texas through sanctions and court costs. This is event number 2 within ten years as is required for a RICO action against a state agency or corporation.

61. The actions taken as described in paragraphs 52 and 53 were part of a scheme to defraud plaintiff William of property and rights secured by the several constitutions aforementioned. Moreover, the actions in paragraph 53 are the result of threats made by justices of the Supreme Court of Texas through their clerk, Kathy Holder.

62. The actions of the defendants were the result of the clearly stated intention of the State Bar of Texas to “**go after**” any citizen or member of the press who dared to criticize the State Bar or other part of the judiciary. Said threats can be seen in the State Bar of Texas Update,

October 1998, wherein the State Bar admits that the State Bar Program for Response to Criticism of Judges was created.

63. Plaintiffs are under attack via the following statute from the Texas Government Code, Chapter 81, which applies solely to the State of Texas defined “persons”, and states as follows:

§ 81.102. State Bar Membership Required

(a) Except as provided by Subsection (b), a person may not practice law in this state unless the person is a member of the state bar.

(b) The supreme court may promulgate rules prescribing the procedure for limited practice of law by:

(1) attorneys licensed in another jurisdiction;

(2) bona fide law students; and

(3) unlicensed graduate students who are attending or have attended a law school approved by the supreme court.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987.

64. However, the Texas statute deprives plaintiffs, without due process of law, of liberty to engage in a lawful occupation for which they are shown to be well fitted and denies to them the

equal protection of the laws. See *Smith v. State of Texas*, 1914.SCT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914); *Yick Wo v. Hopkins*, 118 U.S. 369; *Barbier v. Connolly*, 113 U.S. 31; *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 559; *Lochner v. New York*, 198 U.S. 53; *Adair v. United States*, 208 U.S. 173; *Dent v. West Virginia*, 129 U.S. 114, 124, 125; *Reetz v. Michigan*, 188 U.S. 508, 509; *Cooley's Const. Lim.*, 7th ed., pp. 889, 890; *Bank of Columbia v. Okely*, 4 Wheat., p. 244; *Marbury v. Madison*, 1 Cranch, 176; *Wyeth v. Thomas*, 200 Massachusetts, 474; *Josma v. Western Car Co.*, 249 Illinois, 508; *Bonnett v. Vallier*, 136 Wisconsin, 193; *Chenoweth v. Examiners*, 135 Pac. Rep. 771; *Ruhstrat v. People*, 185 Illinois, 133, 141, 142; *People v. Schenck*, 257 Illinois, 384; *In re Opinion of Justices*, 211 Massachusetts, 618; *Morgan v. State*, 101 N.E. Rep. 7; *State v. Wagener*, 69 Minnesota, 206; *Commonwealth v. Snyder*, 182 Pa. St. 630; *State v. Kreutzberg*, 114 Wisconsin, 530; *People v. Hawkins*, 157 N.Y. 7; *Vicksburg v. Mullane*, 63 So. Rep. 412.

65. Further, The Texas statute is an unreasonable interference with the carrying on of interstate commerce. *Smith v. State of Texas*, 1914.S Ct. 40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914); *Adams Express Co. v. New York*, 232 U.S. 14, (1914); *Savage v. Jones*, 225 U.S. 501, (1912); *Yazoo & Miss, R.R. v. Greenwood Grocery Co.*, 227 U.S. 1, (1913); *Houston & Tex. Cent. R.R. v. Mayes*, 201 U.S. 321, (1906); *Central Ry. Co. v. Murphy*, 196 U.S. 194, 203, 204, (1905).

59. Further, an enactment cannot invade the rights of persons and property under the guise of a police regulation when it is not such in fact. *Smith v. State of Texas*, 1914.SCT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914); *Eden v. People*, 161 Illinois, 296;

People v. Marx, 99 N.Y. 377, (1885); Ritchie v. People, 155 Illinois, 98; Smith v. Alabama, 124 U.S. 465; N.C. & St. L. Ry. v. Alabama, 128 U.S. 96; Williams v. Arkansas, 217 U.S. 79; Watson v. Maryland, 218 U.S. 173; C., B. & Q.R.R. Co. v. Chicago, 166 U.S. 226; Lawton v. Steele, 152 U.S. 137; Minnesota v. Barber, 136 U.S. 319; Brimmer v. Rebman, 138 U.S. 78; Henderson v. New York, 92 U.S. 259, 268; Eubank v. Richmond, 226 U.S. 137; Allgeyer v. Louisiana, 165 U.S. 578, 589; Butchers' Union v. Crescent City Co., 111 U.S. 761.

66. But all men are entitled to the equal protection of the law in their right to work for the support of themselves and families. A statute which permits the attorney to act — because he is presumptively competent — and prohibits the employment of counselors-of-law and all others who can affirmatively prove that they are likewise competent — is not confined to securing the public safety but denies to many the liberty of contract granted to attorneys and operates to establish rules of promotion in a private employment. *Smith v. State of Texas*, 1914.ScT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914).

67. It is a commonplace that rights under the Equal Protection Clause itself arise only where there has been involvement of the State or of one acting under the color of its authority.... This has been the view of the Court from the beginning. *United States v. Cruikshank*, 92 U.S. 542; *United States v. Harris*, 106 U.S. 629; *Civil Rights Cases*, 109 U.S. 3; *Hodges v. United States*, 203 U.S. 1; *United States v. Powell*, 212 U.S. 564. It remains the Court's view today. See, e. g., *Evans v. Newton*, 382 U.S. 296; *United States v. Price*, 383 U.S. 787 (1966).

68. Moreover, if bar members only are allowed the right of representing clients, then a privilege is given to them which is denied all other citizens of the United States. *Smith v. State of Texas*, 1914.SCT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914).

69. Further, none of the cases aforementioned sustains the proposition that, under the power to secure the public safety, a privileged class can be created and be then given a monopoly of the right to work in a special or favored position. Such a statute would shut the door, without a hearing, upon many persons and classes of persons who were competent to serve and would deprive them of the liberty to work in a calling they were qualified to fill with safety to the public and benefit to themselves. *Smith v. State of Texas*, 1914.SCT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914).

70. If the service is public the State may prescribe qualifications and require an examination to test the fitness of any person to engage in or remain in the public calling. *Ex parte Lockwood*, 154 U.S. 116; *Hawker v. New York*, 170 U.S. 189; *Watson v. Maryland*, 218 U.S. 173. The private employer may likewise fix standards and tests, but, if his business is one in which the public health or safety is concerned, the State may legislate so as to exclude from work in such private calling those whose incompetence might cause injury to the public. But as the public interest is the basis of such legislation, the tests and prohibition should be enacted with reference to that object and so as not unduly “interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.” *Smith v. State of Texas*, 1914.SCT.40290, 233 U.S. 630, 58 L. Ed. 1129, 34 S. Ct. 681 (May 11, 1914); *Lawton v. Steel*, 152 U.S. 133, 137.

71. Instead, the State of Texas, through its State Bar of Texas Agency/Corporation, however that bit of nonsense actually passed into law, has regularly used extortion to prevent actions that were constitutional and legal before the enactment of the State Bar Act in 1939. Extortion predicates provide the foundation for a pattern of racketeering activity. Northeast Women's Center Inc. v. McMonagle, 868 F.2d 1342 (3rd Cir. 03/02/1989); United States v. Arena, 180 F.3d 380 (2d Cir. 06/07/1999).

**G. FACTS RELATED TO INTERFERENCE WITH FREEDOM OF ELECTIONS
BY DEFENDANTS**

72. In addition to the aforementioned actions made the base of plaintiff's civil RICO action, said actions of defendants are in violation of the plaintiff's rights to election and holding constitutionally created offices, specifically, Justice of the Supreme Court of Texas.

73. All defendants play, and have played, a significant role in the public electoral process and management of the rules which, *ipso facto*, impacts upon participation in the electoral process: to wit, the defendants have caused to be enacted (by virtue of the illegal participation in the Constitutional Amendment process by members of the corporate State Bar of Texas) amendments and statutes which are being used by the Secretary of State of the State of Texas, and the State Bar of Texas (purportedly under the direct supervision of the Justices of the Supreme Court of Texas) to prevent plaintiffs from election to the office of Justice and Chief Justice of the Supreme Court of Texas.

74. 42 U.S.C. 1972 applies to the State of Texas, the State Bar of Texas, the Justices of the Supreme Court of Texas and to the Secretary of State of the State of Texas, all of which are “persons” within the meaning of 1 U.S.C. 1, the codified Definitions Act which contains the definitions applicable to all legislation enacted by Congress.

75. On January 11, 2002, defendant State Bar of Texas, through its agent Kathy Holder, Director of Membership of the State Bar of Texas, informed plaintiffs that they would not be allowed on the ballot and could not be elected since plaintiffs did not meet the “requirements” to hold the offices of Justice and Chief Justice of the State Bar of Texas.

76. The requirements mentioned by Holder were those established in violation of the Act to readmit the State of Texas to Representation in the Congress of the United States, *supra*. They are the same requirements voted upon by members of the corporate State Bar of Texas in violation of Art. 2, Sec. 1 and Art.3, Sec. 22, *supra*, Texas Constitution, both of which Articles were in place at the time of the several votes.

77. From 1869 to 1980, all citizens were qualified to be elected to, and hold office in, the Supreme Court of Texas, both the Justice and Chief Justice Positions.

78. The defendants caused to be enacted, and enforce through the Elections Code, the “qualifications” changes which fall within the purview of 42 U.S.C. 1972; to wit, plaintiff Mitchell has been forced to resign his candidacy for Texas Supreme Court, Position 1, due to the “qualifications” standards, and the threat of action by the Secretary of State through the

Libertarian Party Chairman, Geoff Neale. Plaintiff William, who holds a Doctorate of Law degree, has been allowed to stay on the Libertarian Party ballot for the elections of November 2002, but has been told by Kathy Holder, Director of Membership for the Bar of Texas, that he will not be allowed on the ballot by the Secretary of State.

79. The new “qualifications,” established in violation of the Act to readmit the State of Texas to Representation in the Congress of the United States, prohibit plaintiffs, and all other citizens of the State of Texas, from holding the aforementioned Constitutional offices for which all citizens were qualified prior to their enactment. These “qualifications” substantially inhibit the citizens rights to run for constitutionally created offices, particularly judicial offices, and dilute the pool of candidates, reserving the offices strictly for members of a public corporation, the State Bar of Texas.

80. The aforesaid changes to the Texas Constitution were not submitted for approval to the Congress of the United States of America, in violation of the Act to readmit the State of Texas to Representation in the Congress of the United States.

81. The State of Texas, and the State Bar of Texas, are covered entities within the meaning of 42 U.S.C. 1972 in that they are persons within the meaning of the definitions covered in the Act.

82. Plaintiffs will be irreparably injured by enforcement of the changes made illegally to the Texas Constitution by representatives of the corporate State Bar of Texas. Said injuries will

come through enforcement of the qualifications amendment to the Texas Constitution by the defendant Secretary of State, by virtue of the Election Code of the State of Texas.

83. Although the merits are not before the Court, the Court should be aware that the changes in the Texas Constitution, which prohibit plaintiffs and all other Texas Citizens from holding the aforementioned Judicial Offices, impacts directly on the elective process and has the effect of interfering with the freedom of elections and, as such, is manifestly unconstitutional in violation of the Fourteenth Amendment to the United States Constitution and of 42 U.S.C. 1972.

84. Pursuant to 42 U.S.C. 1972, when any legislation or action by any entity acts to interfere with the freedom of elections, this court must enjoin such actions.

CLAIM FOR RELIEF

85. The State Bar of Texas, Secretary of the State of Texas and the named Defendant's, operating through the Texas Elections Commission, once again, under color of and in violation of this States Constitution and law, to deprive Plaintiff's of their Rights to run for public office as a candidate for the Texas Supreme Court, and once again, the State Bar Association will continue their irregularities in this and other States of the Union in the free election process where any American can run for a public office without any prerequisites, which will deprive Plaintiff's of their Rights as candidate's and will favor the election of the State Bar Organization's candidate's only. Americans who were not ask for a Bar card before boarding an plane and fight for their country.

86. The above constitutes interference with the freedom of elections by officials and persons acting under color of state law to deprive plaintiffs of rights secured to him by the 42 U.S.C. 1972 and state law.

87. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that this Court:

A. Preliminarily and permanently enjoin defendants from engaging in or directing further harassment of plaintiff's and his supporters and from further acting to interfere with the Libertarian Party in properly carrying out its duties with respect to the November, 2002, Election;

B. Preliminarily and permanently enjoin defendants constituting the Texas Election Commission of the State of Texas, from distributing any official ballot of Election prior to the disposition of this case;

C. Plaintiffs demand judgment in favor of declaring the statutes and constitutional amendments made in violation of the Act to readmit the State of Texas to Representation in the Congress of the United States are in violation of 42 U.S.C. 1972 and that this Court exercises its jurisdiction pursuant to the Fourteenth Amendment to the United States Constitution, 42 U.S.C. 1972, 42 U.S.C. 1983, 28 U.S.C. §§ 1331 and 1343 (3)(4) and 28 U.S.C. §§ 2201 and 2202;

D. Plaintiffs demand a temporary injunction and permanent injunction enjoining the Secretary of State from removing plaintiff William from the November, 2002, ballot for the office of Chief Justice of the Supreme Court of Texas;

E. Plaintiff Mitchell demands declaratory judgment holding that Mitchell is qualified to hold judicial office notwithstanding the illegal modifications to the Texas Constitution and judgment that said changes restricting Mitchell's right to hold Judicial Office be declared unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States as well as 42 U.S.C. 1972, and therefore null and void until such time as they are approved by Congress as required by the Act to Readmit Texas to Representation in Congress;

F. Plaintiffs demand that the Court retain jurisdiction of this matter for all purposes to effect the relief sought above;

G. Plaintiffs demand that this action be advanced on the docket and a speedy hearing ordered in this case, and;

H. Grant such other and further relief as to this Court may seem just and proper, including costs, legal fees and such other relief as may seem just and proper to protect the rights of the plaintiffs.

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